



U.S. Department of Justice

Immigration and Naturalization Service

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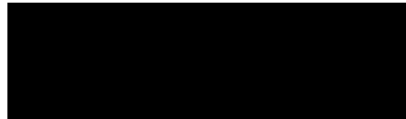
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FILE: 
EAC 01 125 50302

Office: Vermont Service Center

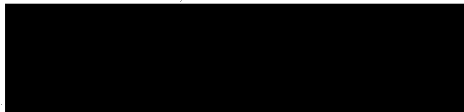
Date: JAN 10 2003

IN RE: Petitioner:
Beneficiary:



APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she is the spouse of a lawful permanent resident of the United States because her spouse was deported (removed) from the United States. The director, therefore, denied the petition.

On appeal, the petitioner, through counsel, states that she first filed a Form I-360 self-petition on November 17, 1999, but the petition was denied for failure to submit proof of good moral character. The petitioner filed another Form I-360 on March 2, 2001, but it was denied because her husband was deported on February 10, 1999. The petitioner further states that grandfathering provisions should be applied to protect her against the inability to file for I-360 relief, as it was not her fault that she did not respond to the request for additional evidence for her first I-360. She states that she was unable to respond to that notice due to having to flee her abuser. She was living in Sioux City, Iowa and then moved to Salt Lake City, Utah. The petitioner indicates that she is sending a brief and/or evidence within 30 days. Two months later, on June 26, 2002, counsel requested an additional extension of 30 days in which to file a brief in support of the appeal. However, it has been approximately seven months since the filing of the appeal, and five months since the request for an additional extension, and neither a brief nor additional evidence has been received in the record of proceeding. Therefore, the record is considered complete.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner claimed to have entered the United States without inspection in 1991. The petitioner married her permanent resident spouse in Sioux City, Iowa, on September 12, 1996. On November 17, 1999 and on March 2, 2001, self-petitions were filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her permanent resident spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(A) requires that the petitioner must be the spouse of a citizen or lawful permanent resident of the United States. 8 C.F.R. 204.2(c)(1)(iii) requires that the abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved.

The Service record reflects that on February 10, 1999, the petitioner's spouse [REDACTED], a native and citizen of Mexico and a lawful permanent resident, was ordered removed from the United States from the Laredo port of entry based on his

conviction as an aggravated felon. Mr. [REDACTED] was, therefore, no longer a lawful permanent resident of the United States when the petitioner filed the self-petition on March 2, 2001.

On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(c) amends section 204(a)(1)(B)(ii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a resident alien may file a petition if the alien demonstrates that he or she is a bona fide spouse of a lawful permanent resident within the past 2 years and whose spouse lost status within the past 2 years due to an incident of domestic violence. Id. Section 1503(c), 114 Stat. at 1520-21. Pub. L. 106-386 does not specify an effective date for the amendments made by section 1503. This lack of an effective date strongly suggests that the amendments entered into force on the date of enactment. Johnson v. United States, 529 U.S. 694, 702 (2000); Gozlon-Peretz v. United States, 498 U.S. 395, 404 (1991).

The record in this case shows that the petitioner's spouse lost his status as a lawful permanent resident of the United States when he was removed from the United States to Mexico on February 10, 1999. More than 2 years later, on March 2, 2001, the self-petition was filed by the petitioner.

The petitioner, therefore, is ineligible for the benefit sought pursuant to section 204(a)(1)(B)(ii) of the Act, and as provided in 8 C.F.R. 204.2(c)(1)(i)(A).

While counsel asserts that the first I-360 should grandfather the applicant's current I-360, the record reflects that the first I-360, filed on September 17, 1999, was denied on June 8, 2000 because the applicant failed to submit documentation to establish that she was a person of good moral character. Although the petitioner claims that she did not respond to the notice because she was fleeing from her abuser, the petitioner had 30 days after service of the decision in which to file an appeal, pursuant to 8 C.F.R. 103.3(a)(2). No appeal was filed based on the director's denial. Further, while the record reflects that Mr. [REDACTED] was removed from the United States based on his conviction as an aggravated felon, there is no evidence in the record that the removal of Mr. [REDACTED] from the United States was due to an incident of domestic violence.

It is also noted for the record that the petitioner was convicted: (1) on July 13, 2000, of child endangerment (aggravated misdemeanor); (2) on June 16, 1996, of simple assault; and (3) on

May 1, 1996, of interference with official acts (aggravated misdemeanor). The Service must address these convictions in any future decisions or proceedings.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.